

TOWN OF KITTERY, MAINE
PLANNING BOARD MEETING
Council Chambers

APPROVED
November 14, 2013

Meeting called to order at 6:06 p.m.

Board Members Present: Susan Tuveson, Karen Kalmar, Deborah Driscoll Davis, Mark Alesse, Ann Grinnell, Bob Melanson,

Members absent: Tom Emerson

Staff: Gerry Mylroie, Planner; Chris DiMatteo, Assistant Planner

Ms. Tuveson noted there is a quorum to conduct business.

Pledge of Allegiance

Minutes:

Ms. Grinnell moved to approve the minutes of October 24, 2013 as corrected

Mr. Melanson seconded

Unanimous by all members present

Public Comment:

Steve Hall, Conservation Commission, requested update on Roylos property and requested a site walk be conducted when review begins again. Requested information on the Kolod property on Whipple Road, noting the construction taking place.

There was no further comment.

PUBLIC HEARING

ITEM 1 – Bartlett Hill Multifamily Cluster Subdivision – Subdivision Preliminary Plan Review.

Action: Grant or deny preliminary plan approval. Owner and applicant Peter J. Paul Trustee of AMP Realty Holdings LLC, is requesting consideration of plans to develop a multi-family residential cluster subdivision. The approximately 18 acre parcel is located on a portion of Tax Map 28, Lot 14 with frontage along Fernald Road and Route 236, in the Residential Suburban Zone with portions in the Commercial C-2 zone and Resource Protection Overlay Zone. Agent is Tom Harmon, Civil Consultants.

Tom Harmon, Civil Consultants, introduced Jay Stevens, Civil Consultants and Peter Paul, applicant. He summarized the plan before the Board:

- Identified plan sheets submitted;
- 3 duplexes and one tri-plex for a total of 9 residential units proposed;
- Municipal water with common septic systems;
- Identified location of open space, reserve areas, and buffers;
- Walkway proposed along right-of-way, following contours;
- Stormwater management plan currently under review by the DEP;

Christine Bennett, Kittery Land Trust (KLT), noted the KLT has an 88 acre preserve adjacent to this project, and has the following observations:

- Access to a very popular network of trails on the Remick Preserve is via an easement adjacent to the project.
- The proposed amount of tree removal will impact the mature forest canopy and diminish the experience of visiting the Preserve. No-cut, no disturb buffers would help reduce this impact.
- The multiple impromptu entrances onto the Remick Preserve by residents of the proposed development are of concern. The KLT would like one controlled entrance, and would also like to

pursue a new easement from the proposed right of way, which would be accessible by the residents of the development and the general public.

- One of the common septic areas appears too close to the Preserve and far removed from the buildings it will be servicing. The KLT would like to see the preserved open space be contiguous to the adjacent Preserve.

Sammy Yaso, Volunteer, KLT, noted his support of staff recommendations, specifically:

- Consider the atypical cul-de-sac design that would reduce the development footprint, and consider including the septic system within the center of the cul-de-sac, away from sensitive areas.
- Preserving those areas abutting the existing preserved land better meets the objectives of cluster development, instead of placing a septic system in those sensitive areas.
- The proposed walkway could be graded into the parking area open to the public and residents, providing access to the Remick Preserve.

Steve Hall, Conservation Commission, asked if the Board has considered the wetland across from 236 that drains into the abutting property, and whether stormwater is draining from one lot to another.

Ms. Tuveson noted this will most likely be discussed under item 2.

Mr. Mylroie added the following:

- The Fire Chief asked the name of ‘Bartlett Hill’ be changed because of the similar name of a local street, in consideration of E911.
- The Fire Chief asked that road standards be consistent for all subdivisions and meet minimum standards should these private streets become public streets. Discussion followed regarding minimum street standards based on trips. Mr. Melanson stated the proposal should meet minimum standards.
- The Police Chief asked about street lighting at the project.

The public hearing closed at 6:40 p.m.

Ms. Tuveson asked the applicant to address the following staff concerns:

- 100-foot wetland setbacks: Mr. Harmon stated they are measuring the setback from the wetland based on the location of the driveway, not the structure. Mr. DiMatteo noted it is the intent, through the cluster ordinance and in Board discussions, that a wetland setback from structures is 100-feet. Ms. Grinnell noted the 100-foot setback for a structure cannot be disturbed by a driveway. Mr. Harmon explained that Table 2 allows for roadways closer to the wetlands. Discussion followed regarding how to interpret the ordinance regarding water and wetland setbacks. The Board concurred the applicant needs to meet the 100-foot setback requirement.
- Pedestrian walkway not shown – Jay Stevens spoke about location of a walkway along Fernald Road and connection to the adjacent parcel on Rt. 236. Discussion followed regarding sidewalk connections.
- Open Space – applicant has provided 79% open space. Staff requested that areas close to the adjacent Reserve be identified as reserved open space and the common space (upland) provide a no-cut/no-disturb buffer adjacent to the Reserve. Mr. Stevens stated they would be willing to include some of the open space areas with the reserved open space, and identified the ‘common space’ adjacent to the KLT parcel as the only remaining land on the parcel that could be further developed, with Board review and approval. Ms. Grinnell is uncomfortable with this area remaining for potential future development. Ms. Driscoll stated the intent of the cluster ordinance is to provide for common open space for use by the residents, such as recreational use. Mr. Harmon stated this area cannot be developed as the total number of units have been reached with the density available. He explained the location of the proposed septic system creates the least disturbance while located where soils support a septic system. Discussion followed regarding common vs. individual septic systems and maintenance provisions. [unidentified] explained the identified septic area are double the size needed, but are done so to show there is sufficient area for back-up if needed. Mr. DiMatteo stated the Board needs to be

consistent regarding identification of reserved open space areas, especially when adjacent to contiguous conservation areas.

- Stream – Staff requests the extent of the stream be identified on the plans as it impacts those land areas that could be part of the Shoreland Overlay zone. Staff will review further with the applicant for Board consideration.

Mr. Mylroie noted the Police Chief requested access from the private way to the commercial property. The Board felt this would negatively impact a residential area. Ms. Kalmar asked if the current ordinance guidelines for determination density were followed. Mr. Harmon stated the manual referenced in the code is no longer in print. Ms. Kalmar stated she would like to know if the proposal meets the existing requirements, in comparison with what has been proposed.

Ms. Grinnell moved to continue review, not to exceed 90 days.

Ms. Driscoll seconded

In summary, the 100-foot buffer needs to be maintained. Mr. Harmon stated this would then change the development of individual lots, and potentially a standard subdivision design. Discussion followed regarding the cul-de-sac and lot locations.

Motion carried unanimously by all members present

OLD BUSINESS

ITEM 2 – Rt. 236 Commercial Lot Development – Paolucci Realty –Subdivision Preliminary Plan Review.

Action: Grant or deny preliminary plan approval. Owner and applicant Peter J. Paul Trustee of Paolucci Realty, is requesting consideration of plans to divide an existing commercial lot located at 93 Route 236, thereby creating a second division within 5 years and requiring subdivision review. The 4.1 acre parcel is located on a portion of Tax Map 28, Lot 14, in the Commercial C-2 Zone. Agent is Tom Harmon, Civil Consultants.

Mr. Mylroie summarized the Board can approve this project as a subdivision or as a proposed development to allow for clearing and grading. Mr. Paul, owner, stated he wished to clear the lot for future division and sale, but wished to use the lot for firewood storage. Mr. DiMatteo explained the applicant is wishing to develop the parcel and there are development standards that must be met. Without knowing what the potential use will be, it is difficult to determine if standards can be met. With the proposed use as for wood storage, there may be a need for screening, access, parking, etc. Mr. Harmon explained they could return to the Board with specific use, meeting all the required development standards. Ms. Kalmar asked if tree removal could be minimized in case a future use could benefit from a less intensive removal of vegetation. Mr. Paul stated he would 'do whatever it takes'. Ms. Tuveson asked about the utility easement. Mr. Harmon stated this will have to be formalized with the water district. Ms. Driscoll asked if stored firewood would be sold on site. Mr. Harmon stated he would have to check the ordinance. Ms. Kalmar asked if there is a method by which the applicant can show what the property would look like 'as proposed'. Mr. Harmon explained a commercial site needs to be level with the road for visual and vehicular access, and this lot is not level. Mr. Alesse suggested some buffer of trees be retained along Route 236. Mr. Harmon explained they have included landscaping along the front. Mr. DiMatteo suggested the applicant return with a design that meets an approved use. Ms. Tuveson noted she believes the applicant should be able to utilize the site, in the interim, as long as such use is in compliance with the code.

Mr. Melanson moved to direct the applicant to submit a plan that complies with a permitted use in the Commercial C-2 zone.

Ms. Grinnell seconded

Motion carried unanimously by all members present

ITEM 3 – 68 Chauncey Creek Road Replacement Structure – Shoreland Development Plan Review.

Action: Review revised plan and grant or deny final plan approval. John Rummler, owner and applicant, requests approval to replace and expand an existing structure at the property located at 68 Chauncey Creek Road, Tax Map 45, Lot 72, Residential – Kittery Point Village Zone and Shoreland Overlay Zone. Agent Ken Markley, Easterly Survey, Inc

Ken Markley summarized project review and activities to date, noting the proposed structure now meets all side and front setbacks and is further removed from the water resource than the previous structures. The proposed expansions are in conformance with code requirements, do not exceed 30% or impervious area. Discussion followed regarding the submitted calculations by the applicant. Mr. DiMatteo stated these revised calculations are now consistent and accurate. Ms. Driscoll noted there seems to be a discrepancy for reconstruction in the shoreland zone, between 12 and 18 months. Mr. DiMatteo stated this does not affect the applicant at this time, but believes it should be 12 months.

Mr. Melanson moved to accept the final plan and read the Findings of Fact

Ms. Grinnell seconded

Unanimous

WHEREAS: Owner and applicant John Rummler proposes to replace and expand an existing single family dwelling and garage located at 68 Chauncey Creek Road, Tax Map 45, Lot 72 in the Residential Suburban and Shoreland Overlay Zone, hereinafter the “Development”; and

pursuant to the Plan Review meetings conducted by the Town Planning Board as noted;

and pursuant to the Project Application and Plan and other documents considered to be a part of the plan review decision by the Town Planning Board in this Finding of Fact consisting of the following (hereinafter the “Plan”):

1. Shoreland Overlay Zone Project Plan Review Application, dated 6/4/2013.
2. Project Plan Review, *Shoreland Overlay Zone, Rummler Residence 68 Chauncey Creek Road, Kittery Point, Maine* prepared by Interface Architects Inc., dated 11/20/12; revised 6/4/13.
3. *Existing Conditions Plan for Property at 68 Chauncey Creek Road, Kittery Point, York County, Maine* prepared by Easterly Surveying Inc., dated 12/31/12, revised 1/2/13 and 4/2/13.
4. *Site Plan for Property at 68 Chauncey Creek Road, Kittery Point, York County, Maine* prepared by Easterly Surveying Inc., dated 12/31/12, as revised through 11/6/13.

NOW THEREFORE, based on the entire record before the Town Planning Board and pursuant to the applicable standards in the Land Use and Development Code, the Town Planning Board makes the following factual findings and conclusions:

FINDINGS OF FACT

16.3.2.17. D Shoreland Overlay Zone - Standards.

1.d d. The total footprint of areas devegetated for structures, parking lots and other impervious surfaces, must not exceed twenty (20) percent of the lot area, including existing development, except in the following zones:

Findings: The proposed structures and impervious surfaces total 3,340 sf. The lot is 16,700 sf. Impervious surface coverage totals 20%.

Conclusion: The criteria limiting impervious surface coverage to 20% has been met.

Vote: 6 in favor 0 against 0 abstaining

II. Standards in the Shoreland Overlay Zone

Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS have been met.

16.7.3.1 Prohibitions and Allowances.
<u>Finding:</u> This is an existing non-conforming lot with non-conforming structures. The proposed structure locations appear to be located at the greatest practical extent on a lot with a limited building envelope. The proposed structures now meet the front, side and rear setback standards, and do not extend further into the Shoreland setback of 100 feet than what previously existed.
<u>Conclusion:</u> The proposed location of the structures on a non-conforming lot are not more non-conforming than the previously existing structures, and appear to be located at their greatest practical extent.
16.7.3.6 Nonconforming Structures in Shoreland and Resource Protection Zones have been met.
16.7.3.6.1 Expansion.
<u>Finding:</u> A-B. Calculations indicate the proposed expansion in volume (10.50%) and square feet (30%) meet code requirements regarding expansion in the shoreland zone. C. The previously existing structures (since removed) were non-conforming. The location of the proposed garage is now in conformance to front and side setback, and the proposed dwelling and deck are less or no more non-conforming, as both are located within the previous non-conforming setbacks.
<u>Conclusion:</u> The criteria for expansion of non-conforming structures in the Shoreland Overlay zone appears to have been met, and the location of the structures appear to be in compliance to the greatest practical extent, given the limited building envelope of the non-conforming lot.
Vote: <u>5</u> in favor <u>1</u> against (Driscoll) <u>0</u> abstaining

III. Procedures for Administering Permits For Shoreland Development Review find the development will:

16.10.10.2 D. An Application will be approved or approved with conditions if the reviewing authority makes a positive finding based on the information presented. It must be demonstrated the proposed use will:

1. Maintain safe and healthful conditions;
Finding/Conclusion: The proposed development does not appear to have an adverse impact. The removal of the substandard structures has created a safe condition.
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
2. Not result in water pollution, erosion or sedimentation to surface waters;
Finding/Conclusion: The proposed development does not appear to have an adverse impact. Increase in impervious coverage meets maximum allowance. Maine DEP Best Management Practices will be followed regarding erosion control measures during site development and building construction (Condition # 3).
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
3. Adequately provide for the disposal of all wastewater;
Finding: Applicant has stated that the existing septic system (installed in 1987) will be inspected and certified that it is functional and in compliance will all state and town regulations (Cuomo letter of 8/5/13). (Condition #4)
Conclusion: This standard appears to have been met.

Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
4. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
Finding: There is no change in the intended use of the property (residential) and the location of the septic system is beyond the 100-foot shoreland setback.
Conclusion: The proposed development does not appear to have an adverse impact
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
5. Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
Finding: There will be no alterations to the shore cover; visual access should be improved with the removal of the silver maple and relocation of the dwelling and garage structures.
Conclusion: The proposed development does not appear to have an adverse impact
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
6. Protect archaeological and historic resources;
Finding/Conclusion: The proposed development does not appear to have an adverse impact
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
7. Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;
This standard is not applicable.
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
8. Avoid problems associated with floodplain development and use;
This standard is not applicable; the site is not located in the Floodplain
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
9. Is in conformance with the provisions of this Code;
Finding/Conclusion: As previously noted, the proposed location of the structures are less non-conforming than what previously existed and conform to the greatest practical extent given the limitations of the property. The increase in volume, area, and impervious surface impact, and other site improvements, appear to be in conformance with the provisions of this Code. The proposal does not create more non-conforming conditions than what previously existed.
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
10. Be recorded with the York County Registry of Deeds.
Shoreland Development plans must be recorded with the York County Registry of Deeds prior to the issuance of a building permit.
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining

Based on the foregoing Findings and Conclusions, the Planning Board finds the applicant has satisfied each of the review criteria for approval and therefore the Planning Board approves the Shoreland Development Plan Application of John Rummler for a single family dwelling, garage and driveway at 68 Chauncey Creek Road subject to the following conditions and/or waivers:

Application Waivers: None

Conditions of Approval (to be included on final plan to be recorded):

1. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan. (Title 16.10.9.1.2)
2. A building permit must be obtained within 18 months of removal (2/10/13) of previous structures. (Title 16.7.3.5.6 Nonconforming Structure Reconstruction)
3. Applicant/contractor will follow Maine DEP *Best Management Practices* for all work associated with site and building construction to ensure adequate erosion control and slope stabilization.
4. Septic system will be inspected to certify it is functional and in compliance with state and town regulations prior to issuance of occupancy permit.
5. Prior to the commencement of grading and/or construction within a building envelope, as shown on the Plan, the owner and/or developer must stake all corners of the envelope. These markers must remain in place until the Code Enforcement Officer determines construction is completed and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed.
6. All Notices to Applicant contained herein.

Notices to Applicant:

1. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
2. State law requires all subdivision plans, and any plans receiving waivers or variances, be recorded at the York County Registry of Deeds within 90 days of the final approval.
3. One (1) mylar copy and two (2) paper copies of the final plan (recorded plan if applicable) and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department. Date of Planning Board approval shall be included on the final plan in the Signature Block.
4. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer, incorporating as elements the Development Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.

The Planning Board authorizes the Planning Board Chairman to sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval.

Vote: 6 in favor 0 against 0 abstaining

Approved by the Kittery Planning Board on November 14, 2013

Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

Break

ITEM 4 – Board Member Items / Discussion

A. Review punch list, update and establish priorities;

- Major/Minor Changes: Mr. DiMatteo stated he has worked on additional language to reconsider thresholds for field changes vs. plan modifications for the Board to consider at a future date.
- Report to Council: Staff will provide format for Board review.
- Discussion followed on the following punch list items:
 - Board would like building permits posted on-line if possible;
 - ordinance changes posted on line;
 - DPW projects list provided by DPW;
 - abutters list to Board members;
 - definition of ‘commercial recreation’;
 - expansion of outdoor seating to other zones;
 - update design standards for LED lighting;
 - follow up on LD220 and LD810 status;
 - address limitation of building permits;
 - cluster update workshop to include Open Space Committee;
 - need for Board member training and retreat, tentatively scheduled for Friday, January 10 at Kittery Community Center;
 - definitions for ‘shoreland’ and ‘highest annual tide’;
 - develop language for prohibiting site work if application under Board review;
 - sidewalks and ‘pedestrian ways’ to nowhere
- Add to the punch list:
 - Fines;
 - 16.7.3.5.6 inconsistencies;
 - structure replacement outside of shoreland zone;
 - federal road design standards;
 - flood hazard ordinance (16.5.3.4);
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B. Board By-Laws

Ms. Grinnell asked if the Board could move this off the table.

Ms. Grinnell moved to approve the Planning Board By-Law amendments dated April, 2013, edited per Frank Dennett

Mr. Melanson seconded

Ms. Grinnell stated she wished to leave in the residency requirement. Ms. Driscoll requested the language be changed to ‘...residents of the Town for a minimum of one year...’. Ms. Tuveson stated she wanted to have all changes from ‘are’ back to ‘shall’. Following discussion, the Board felt this was not ready to proceed for approval.

Ms. Grinnell withdrew her motion to approve the amended By-Laws.

Members will review document at the December 12, 2013 meeting.

ITEM 5 – Town Planner Items

- A representative from the Planning Board is needed to attend the Shore and Harbor Plan Advisory Committee meetings. The next meeting is Thursday December 5 at 1:00 p.m. Deborah Driscoll will attend on behalf of the Board. Board members will alternate attendance at these meetings. Ms. Grinnell asked if a member of the Comprehensive Update Committee will attend.
- Wednesday, November 20 at 6:00 p.m. is presentation of Sarah Long Bridge landing plan. Following this meeting, the Board needs to recommend to Council, who will forward recommendation to MDOT. A 2:00 p.m. stakeholders meeting will be held prior to the 6:00 p.m. meeting.

- Winter Farmer's Market is beginning December 1 at Kittery Community Center.
- A. Residential Growth Management/Soil Suitability Workshop (December 3, 2013 at 6:00 p.m.);
Not discussed.
- B. Quality Improvement
Not discussed

Mr. Melanson moved to adjourn

Ms. Grinnell seconded

Motion carried unanimously

The Kittery Planning Board meeting of November 14, 2013 adjourned at 9:30 p.m.

Submitted by Jan Fisk, Recorder, November 24, 2013